94 S.B. CIVIL WRIT PETITION NO.890/2007
(Vimla Rani Vs. State of Rajasthan & ors.)

Date of Order ::30th August 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.B.S.Kohinoor for the petitioner
Mr.Rameshwar Dave, Dy.G.A. for the respondents

Learned counsel for the parties are ad idem that the question involved in this writ petition stands concluded in favour of the petitioner in view of the decision of this Court in case of Smt. Neetu Choudhary Vs. State of Rajasthan and Ors. 2005 (5) RDD 1144 that has been affirmed by the Division Bench of this Court in D.B. Civil Special Appeal (Writ) No.2542/2006 (DRJ).

The petitioner was appointed as Nurse Grade-II on urgent temporary basis by the order dated 12.07.2000 (Annex.1); and while continuing as such, went on maternity leave from 16.05.2006 to 27.09.2006 (application Annexure-3); and joined back on 28.09.2006. The petitioner has received communication from the Dy. Chief Medical & Health Officer, Raisinghnagar (Annexure-6) that the said Office had not received any order for sanctioning maternity leave to the employees working on contract; that if the petitioner was in possession of any such order, she may supply the same so that her maternity leave could be sanctioned, else the salary

paid for the said period shall be recovered.

This Court in the case of Neetu Choudhary (supra) has held and ordered,-

> "The Government of Rajasthan under its order No.F.12(1) F.II /54 dated 25.2.1955 declared the temporary female Government servants entitled for maternity leave. In view of this decision of the Government of Rajasthan the petitioner being a temporary female Government servant is entitled for the maternity leave under Rule 103 of the Rules of 1951. Such benefits cannot be denied to the petitioner merely on the count of the mode of payment of wages. The petitioner is working with respondents on urgent temporary basis and her status remains unchanged irrespective of the mode of payment of salary. In view of provisions of Rule 103 of the Rules of 1951 and decision of Government of Rajasthan dated 25.2.1955 the petitioner is entitled for maternity leave. The order dated 30.10.2001 cannot be made applicable upon the petitioner as she is working in temporary capacity though getting consolidated wages.
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> For the reasons mentioned above the writ petition is allowed and the respondents are directed to sanction maternity leave to the petitioner as applied by her and all benefits consequential thereto be given to her within a period of two months from the date a certified copy of this order is placed before the competent authority by the petitioner."

On the matter being taken to the Division Bench in the aforesaid time barred appeal, the Hon'ble Division Bench has pronounced rather heavily against the posture adopted by the Department while observing,-

> "A bizarre argument has been advanced by the appellant in this case. The appointment against the sanctioned post under the rules being offered, the respondent was appointed after regular selection. However, other benefits along with benefit of maternity leave are being denied to the women employees of the State, which is against the very basic norms of equality

> of law and, moreover, on the one hand the Government at all forums is talking about the gender equality, gender justice and betterment of status of women and, on the other hand, it is denying the benefit of maternity leave to its own employees under the guise that appointment is not under the regular Rules, forgetting it that appointment in first place was given after due selection by following regular process of selection. On the first principles of a welfare State, her appointment cannot be treated as a back-door entry to deny the basic benefit of maternity leave to women employees of the State."

In view of the aforesaid decisions, this writ petition succeeds and is allowed; and the impugned communication dated 16.01.2007 (Annex.6) stands quashed. The respondents shall take up for consideration sanctioning of maternity leave to the petitioner as applied; and all consequential benefits thereto shall be accorded within a period of two months from the date a certified copy of this order is placed before the competent authority. No order as to costs.

(DINESH MAHESHWARI),J.

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